

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESUS T. DOMINGO.

Petitioner,

V.

STATE OF WASHINGTON,

Respondent.

CASE NO. C19-659 MIP

ORDER ADOPTING REPORT AND RECOMMENDATION

THIS MATTER comes before the Court on Petitioner's Objections (Dkt. No. 7) to the Report and Recommendation of the Honorable Brian A. Tsuchida, United States Magistrate (Dkt. No. 6.) Having reviewed the Report and Recommendation, the Objections and all papers, the Court ADOPTS the Report and Recommendations and DENIES Petitioner's S.C. § 2241 Petition.

Under Federal Rule of Civil Procedure 72, the district judge must resolve de novo any part of the Magistrate Judge's Report and Recommendation that has been properly objected to.

1 and may accept, reject, or modify the recommended disposition. Fed. R. Civ. P. 72(b)(3); See
2 also 28 U.S.C. § 636(b)(1).

3 Petitioner has submitted a writ of habeas corpus under 28 U.S.C. § 2254, challenging his
4 confinement at the Coyote Ridge Corrections Center. (Dkt. No. 1.) Judge Tsuchida
5 recommended dismissal of Petitioner's habeas petition because he has not exhausted his state
6 judicial remedies as required by Preiser v. Rodriguez, 411 U.S. 475, 500 (1982), and because
7 Petitioner's claims—that he was not charged by Grand Jury Indictment and his conviction
8 violates the Thirteenth Amendment's prohibition against slavery—lack merit. (Dkt. No. 6 at
9 3-6.) Judge Tsuchida also recommended that the Court decline to issue a certificate of
10 appealability ("COA") because "no jurist of reason" could conclude that the "issues presented
11 are adequate to deserve encouragement to proceed further." (Dkt. No. 6 at 5 (quoting Miller-El
12 v. Cockrell, 537 U.S. 322, 327 (2003).))

13 In his objections to the Report and Recommendation, Petitioner (1) disputes that his
14 habeas petition needs to be conditioned upon the exhaustion of any other remedy (Dkt. No. 7 at
15 2); and (2) asks the Court "to order Respondent to present the Bill of Indictment of a Grand Jury
16 causing the order of Petitioner's arrest and detainment." (Id. at 1). Both objections were
17 addressed in the Report and Recommendation. (see Dkt. No. 6 at 4 (citing Coleman v.
18 Thompson, 501 U.S. 722, 731 (1991)) ("A federal court must dismiss a habeas petition if all
19 claims are unexhausted"); id. at 4 (citing Hurtado v. People of State of California, 110 U.S. 516
20 (1884)) ("[I]t has long been settled that there is no denial of Federal Constitutional rights
21 involved in the substitution of the prosecuting attorney's criminal information for the grand
22 jury's indictment."))

1 Having reviewed the Report and Recommendation and the related record, the Court
2 agrees with Judge Tsuchida regarding Petitioner's failure to exhaust state judicial remedies and
3 that a state may prosecute a defendant by criminal information. The Court therefore ADOPTS
4 the Report and Recommendation, (Dkt. No. 6). Petitioner's habeas petition is DISMISSED
5 without prejudice and the Court declines to issue a certificate of appealability.

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7 The clerk is ordered to provide copies of this order to Petitioner, all counsel, and to Judge
8 Tsuchida.

9 Dated June 18, 2019.

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12 Marsha J. Pechman
13 United States District Judge

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